

## **REMARKS**

The drawings have been amended for clarification purposes only, and no new subject matter has been added. Claims 73, 75-77, and 79-82 have been amended and claim 74 has been canceled. As such, claims 73 and 75-82 are currently pending in the case. Further examination and reconsideration of the presently claimed application are respectfully requested.

### **Sequence Compliance**

Fig. 1 was noted as lacking a sequence identification number. As noted above, Fig. 1 has been amended to reference the sequence included therein as Sequence Identification No. 3. This amendment is believed to address the concerns expressed in the Office Action regarding the compliance of the sequences recited in the claims and the specification. Consequently, removal of such a citation is respectfully requested.

### **Section 101 Rejection**

Claims 79-82 were rejected for being directed to non-statutory subject matter. To expedite prosecution, claims 79-82 have been amended in a manner suggested by the Examiner in the Office Action to overcome the rejection. Consequently, removal of this rejection is respectfully requested.

### **Section 112, 2nd Paragraph, Rejection**

Claims 75-82 were rejected under 35 U.S.C. § 112, second paragraph, for being indefinite. In particular, the phrase “the molecule” in claims 75-77 was deemed unclear as to whether it is referring to the nucleic acid molecule or a different molecule. In addition, the term “contains” in claims 80 and 81 was deemed unclear. To expedite prosecution, claims 75-77, 80, and 81 have been amended in a manner suggested by the Examiner in the Office Action to overcome their rejections. It is noted that claims 78, 79, and 82 were not specifically cited in the Office Action for being indefinite. Upon review of the claims, it is asserted that claims 78, 79,

and 82 are definite. Accordingly, removal of § 112, second paragraph rejection of claims 75-82 is respectfully requested.

#### **Section 112, 1st Paragraph, Rejection**

Claims 73-82 were rejected under 35 U.S.C. § 112, first paragraph for failing to contain subject matter which was not described in the specification in such a way to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention. In particular, the Examiner alleges that the amino acid sequence of SEQ ID NO:2 was not described in the application as originally filed nor in any of its parent applications. Although Applicants traverse such an assertion, claim 73 has been amended to remove the reference of SEQ ID NO:2 to expedite prosecution of the case. In particular, claim 73 has been amended to specify the isolated nucleic acid molecule includes “... a nucleotide sequence of SEQ ID NO:3 and a coding sequence encoding an organophosphorous acid anhydride.” As noted in the Office Action, the specification clearly discloses the “opd gene” of Fig. 1 encoded by an organophosphorous acid anhydride. As such, it is asserted that claim 73 includes subject matter which is described in the specification, particularly in a manner to reasonably convey to one skilled in the art that the inventors had possession of the claimed invention upon filing. It is noted that none of claims 75-82 were specifically rejected with respect to the written description requirement. Upon review of the claims, it is asserted that claims 75-82 do include subject matter which is described in the specification and, therefore, the written description requirement has been fulfilled for claims 73 and 75-82. As noted above, claim 74 has been canceled rendering rejection thereto moot. Accordingly, removal of § 112, first paragraph rejection of claims 73-82 is respectfully requested.

#### **Section 102 Rejection**

Claims 73-75 and 77-81 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,484,728 to Serdar et al. (hereinafter referred to as “Serdar”).

**Serdar is not available as prior art against the presently claimed case.** To expedite prosecution, a declaration under 37 C.F.R. § 131 is filed with this response. The declaration establishes an invention date prior to August 26, 1988 for at least the subject matter of claim 73. Because the parent application relating to Serdar was filed on August 26, 1988, it is not available as prior art under 35 U.S.C. § 102(e) against claim 73, nor any dependent claims thereto including claims 75 and 77-81. As noted above, claim 74 has been canceled rendering rejection thereto moot. Accordingly, removal of the 102(e) rejection of claims 73-75 and 77-81 is respectfully requested.

**Section 103 Rejection**

Claims 76 and 82 were rejected under 35 U.S.C. § 102(b) as being unpatentable over Serdar in view of U.S. Patent No. 4,849,355 to Wong et al. As noted above, Serdar is not available as prior art against claim 73 and, therefore, no reference can be cited with Serdar to teach the limitations of claim 73 or any claims dependent therefrom including claims 76 and 82. Accordingly, removal this rejection is respectfully requested.

**CONCLUSION**

This response constitutes a complete response to all issues raised in the Office Action mailed February 8, 2006. In view of the remarks herein, Applicants assert that pending claims 73 and 75-82 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

**PETITION UNDER 37 C.F.R. § 1.136 FOR EXTENSION OF TIME**

Applicant respectfully petitions the Commissioner for a three month extension of time under 37 C.F.R. § 1.136 for responding to the Office Action mailed February 8, 2006.

The Commissioner is authorized to charge the required fees or credit any overpayment to deposit account no. 50-1085.

Respectfully submitted,  
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